MONTANA LEGISLATIVE HISTORY

Chapter 458 1989

Bill H _____ S 426 Original bill & history ✓ C

H. Committee on Human Services & Aging

Hearing Date(s) 3-15 ___C

_____ ___C

_____ ___C

_____ ___C

Date Out 3-15 ___C

S. Committee on Public Health Welfare & Safety

Hearing Date(s) 2-17 ___C

_____ ___C

_____ ___C

_____ ___C

Date Out 2-17

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/07 HEARING
3/13 COMMITTEE REPORT--BILL PASSED AS AMENDED
3/27 REREFERRED TO TAXATION
DIED IN COMMITTEE

SB 424 INTRODUCED BY BROWN, ROBERT, ET AL.
PROVIDE FOR QUARTERLY ESTIMATED INCOME TAX PAYMENTS FOR CERTAIN INDIVIDUALS
BY REQUEST OF GOVERNOR

2/14 INTRODUCED
2/14 REFERRED TO TAXATION
2/15 FISCAL NOTE REQUESTED
2/20 FISCAL NOTE RECEIVED
2/20 FISCAL NOTE PRINTED
3/07 HEARING
3/14 COMMITTEE REPORT--BILL PASSED AS AMENDED
3/27 REREFERRED TO TAXATION
DIED IN COMMITTEE

SB 425 INTRODUCED BY HARP
ABOLISH WORKERS' COMPENSATION COURT; REPLACE WITH 3-MEMBER ADMINISTRATIVE BOARD

2/14 INTRODUCED
2/14 REFERRED TO JUDICIARY
2/15 FISCAL NOTE REQUESTED
2/17 HEARING
2/17 COMMITTEE REPORT--BILL PASSED
2/20 2ND READ DO PASS MOTION FAILED 24 26
2/20 2ND READING INDEFINITELY POSTPONED 27 21
2/21 FISCAL NOTE RECEIVED

SB 426 INTRODUCED BY RASMUSSEN
ALLOW PROPRIETOR TO DESIGNATE ENTIRE PUBLIC PLACE AS A NONSMOKING AREA

2/15 INTRODUCED
2/15 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
2/17 HEARING
2/17 COMMITTEE REPORT--BILL PASSED
2/20 2ND READING PASSED 46 4
2/21 3RD READING PASSED 41 9

TRANSMITTED TO HOUSE
2/22 REFERRED TO HUMAN SERVICES & AGING
3/15 HEARING
3/16 COMMITTEE REPORT--BILL CONCURRED
3/28 2ND READING CONCURRED 81 17
3/29 3RD READING CONCURRED 78 19

RETURNED TO SENATE
3/31 SIGNED BY PRESIDENT
3/31 SIGNED BY SPEAKER
3/31 TRANSMITTED TO GOVERNOR
4/05 SIGNED BY GOVERNOR
CHAPTER NUMBER 458 EFFECTIVE DATE: 4/05/89

SB 427 INTRODUCED BY RASMUSSEN, ET AL.
REVISE THE SUNRISE LAWS

INTRODUCED BY Senate BILL NO. 426

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA CLEAN INDOOR AIR ACT TO ALLOW THE PROPRIETOR OR MANAGER OF AN ENCLOSED PUBLIC PLACE TO DESIGNATE AND RESERVE THE ENTIRE AREA AS A NONSMOKING AREA; AMENDING SECTION 50-40-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-40-104, MCA, is amended to read:

"50-40-104. Designation or reservation of smoking or nonsmoking areas -- notice. (1) ~~Except--for--those--enclosed public--places--provided-for-in-50-40-105-and-as-provided-in 50-40-201,-the~~ The proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs; ~~or~~

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area; ~~or~~

(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or

(d) designate and reserve the entire area as a nonsmoking area.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment."

NEW SECTION. **Section 2.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 3.** Effective date. [This act] is effective on passage and approval.

-End-

LC 1286/01

INTRODUCED BILL
SB 426

CHAIRMAN--TOM HAGER
SECRETARY-DOROTHY QUINN COMMITTEE--(S) PUBLIC HEALTH, W & S OFFICE--ROOM 440
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: M,W,F TIME: 1:00 P.M.

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL		REFER DATE	LATEST DATE/ACTION ON BILL	
			SPONSOR: HAGER, TOM	TITLE-PERMITTING BELOW-GRADE INSTALLATION OF LIQUIFIED PETROLEUM GAS APPLIANCES
SB 217		01/23	02/15--(S) MOTION FAILED	TO RECONSIDER ADOPTION OF ADV COM RPT
			SPONSOR: HALLIGAN, MIKE	TITLE-EXTEND CERTIFICATE OF NEED LAWS
SB 259		01/28	03/18--(S) CHAPTER NUMBER	EFFECTIVE DATE: 03/18/89
			SPONSOR: WILLIAMS, BOB	TITLE-EXEMPTIONS FROM SUNRISE LAW
SB 270		01/27	04/20--(S) -	EFFECTIVE DATE: 10/01/89 (S10, 11)
			SPONSOR: WILLIAMS, BOB	TITLE-ASBESTOS CERTIFICATION AND PERMIT PROGRAM
SB 270		03/22	04/20--(S) -	EFFECTIVE DATE: 10/01/89 (S10, 11)
			SPONSOR: WILLIAMS, BOB	TITLE-ASBESTOS CERTIFICATION AND PERMIT PROGRAM
SB 272		01/27	04/14--(S) CHAPTER NUMBER	EFFECTIVE DATE: 04/14/89
			SPONSOR: KEATING, TOM	TITLE-REPEAL SUNSET PROVISION OF THE 1987 MENTAL HEALTH INVOLUNTARY COMMITMENT ACT
SB 289		01/30	03/22--(S) CHAPTER NUMBER	EFFECTIVE DATE: 03/22/89
			SPONSOR: HAGER, TOM	TITLE-EXTEND LEASE TERM OF COUNTY NURSING HOMES FOR MANDATED CAPITAL IMPROVEMENTS
SB 295		02/01	03/14--(H) TABLED IN COMMITTEE	(H) NATURAL RESOURCES
			SPONSOR: HAGER, TOM	TITLE-LIMIT LIABILITY IN HAZARDOUS WASTE SPILL CLEAN-UPS
SB 299		01/31	02/15--(S) ADVERSE COM RPT ADOPTED	(S) PUBLIC HEALTH, WELFARE & SAFET
			SPONSOR: ECK, DOROTHY	TITLE-HEARING AID CONSUMER PROTECTION ACT
SB 323	R	02/02	03/22--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: VAUGHN, ELEANOR	TITLE-PENALTY FOR LATE LICENSE RENEWAL OF HOTEL, FOOD ESTABLISHMENT, CAMPING, ETC.
SB 340		02/04	03/29--(S) CHAPTER NUMBER	EFFECTIVE DATE: 06/30/89
			SPONSOR: WILLIAMS, BOB	TITLE-EXEMPT HOSPITALS FROM THE CERTIFICATE OF NEED LAWS
SB 350	R	02/06	04/24--(S) DIED IN COMMITTEE	
			SPONSOR: HAGER, TOM	TITLE-REVISING THE LAWS ON HEALTH SERVICE CO. RELATED TO TAXES AND INVESTMENT
SB 373		02/08	04/24--(S) DIED IN COMMITTEE	
			SPONSOR: PINSONEAULT, DICK	TITLE-BLOOD AND URINE TESTING AS A CONDITION OF EMPLOYMENT
SB 382		02/10	03/29--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: HAGER, TOM	TITLE-IMMUNITY FROM LIABILITY FOR MEDICAL ETHICS COMMITTEES
SB 407		02/13	03/30--(S) -	EFFECTIVE DATE: 03/30/89 (S3, 21)
			SPONSOR: JACOBSON, JUDY	TITLE-GENERALLY REVISE THE LAWS RELATING TO EMERGENCY MEDICAL CARE SERVICES
SB 426		02/15	04/05--(S) CHAPTER NUMBER	EFFECTIVE DATE: 04/05/89
			SPONSOR: RASMUSSEN, TOM	TITLE-ALLOW PROPRIETOR TO DESIGNATE ENTIRE PUBLIC PLACE AS A NONSMOKING AREA
SB 437		02/15	04/21--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: NORMAN, BILL	TITLE-AIDS PREVENTION ACT
SB 442		02/15	04/05--(S) CHAPTER NUMBER	EFFECTIVE DATE: 04/05/89
			SPONSOR: LYNCH, J.O.	TITLE-COMMUNICABLE TUBERCULOSIS--EMERGENCY DETENTION OF PERSON
SB 454		02/16	03/30--(S) -	EFFECTIVE DATE: 10/01/89 (S1-3, 5, 6)
			SPONSOR: WALKER, MIKE	TITLE-PROCEDURES FOR NOTIFICATION OF PERSONNEL EXPOSED TO INFECTIOUS DISEASE

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By Chairman Tom Hager, on February 17, 1989, at 1:00 p.m. in Room 330, State Capitol.

ROLL CALL

Members Present: Senators Tom Hager, Chairman; Tom Rasmussen, Vice Chairman; J. D. Lynch, Matt Himsl, Bill Norman, Harry H. McLane, Bob Pipinich

Members Excused: None

Members Absent: None

Staff Present: Tom Gomez, Legislative Council
Dorothy Quinn, Committee Secretary

Announcements/Discussion: None

HEARING ON SENATE BILL 442

Presentation and Opening Statement by Sponsor: Senator J. D. Lynch, Senate District #34, advised that he was the chief sponsor of SB 442, which authorizes emergency detainment of a person who is suspected of having communicable tuberculosis and who is likely to leave the jurisdiction to avoid a hearing on commitment and treatment.

List of Testifying Proponents and What Group they Represent:

Judith Gedrose, Department of Health and Environmental Sciences

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Judith Gedrose, DHES, stated that essentially the bill asked for removal of the three-day waiting period in the hearing process to detain someone for tuberculosis diagnosis and treatment. She supplied written testimony supporting their view (Exhibit #1).

Questions From Committee Members: None

Closing by Sponsor: Senator Lynch closed without further comments.

DISPOSITION OF SENATE BILL 442

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch moved that SENATE BILL 442 DO PASS. Senators in favor, 7; opposed, 0.

HEARING ON SENATE BILL 426

Presentation and Opening Statement by Sponsor: Senator Tom Rasmussen, Senate District #22, advised that he is the sponsor of SB 426 which revises the Montana Clean Indoor Air Act to allow the proprietor or manager of a public place to designate the entire area as a non-smoking area if they so choose.

List of Testifying Proponents and What Group they Represent:

Robert W. Moon, Montana Department of Health, and Montana Public Health Association
Toni Jensen, Rocky Mountain Tobacco Challenge
Dr. Karen Landers, Self, Helena
Darlene Miller, Self
Robert Johnson, Lewis and Clark County Health Department
Karen Malisani, Cancer Society
Doug Brown, American Lung Association
Peter Van Nice, Self
Jerome Anderson, Tobacco Institute
Jim Leiter, Health Department
Tom Maddox, Montana Association of Tobacco Distributors
Annie Bartos, Attorney, Montana Lung Association
Thomas E. Heyes, U. S. Postal Service, supplied written testimony (Exhibit #21)
Earl Dorsey, Postmaster, Helena, supplied written testimony (Exhibit #22)

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Robert W. Moon said he spoke in favor of SB 426 representing a public health agency and a public health association whose mission it is to help improve and protect the health of the people. He advised that cigarette smoking is responsible for more than one in every six deaths in Montana, and causes much human suffering. Smoking remains the single most preventable cause of death, and use of smokeless tobacco can cause cancer in humans, according to Mr. Moon. The proposed amendment would clarify the legality of the issue of keeping an area smoke free. He also stated Montana could benefit in terms of revenue through reduction in health care costs. He stated the State of Montana, through assistance from federal sources, is spending approximately $68,000,000 to treat smokers. However he stated health, not money, motivates the call for the reduction of tobacco use in SB 426.

Toni Jensen, stated she is Coordinator of the Rocky Mountain Tobacco Free Challenge, a federally funded program operated by the State Department of Health and Environmental Sciences. She said she spoke on behalf of SB 426 since involuntary smoke is extremely dangerous to non-smokers in a number of ways, and setting limits for smoking in the work place is important. She believes this bill provides for a minor change in the Montana Clean Indoor Air Act and gives freedom of choice. She provided the committee with her written testimony (Exhibit #3).

Dr. Karen Landers advised that she is a pediatrician from Helena representing herself. As a pediatrician, her primary focus is prevention of disease, and she spoke in favor of SB 426 which allows an entire public place to be designated as non-smoking by the proprietor or manager. Evidence suggests that passive smoke is not without effects. She urged the committee to give SB 426 a favorable recommendation. (Exhibit #4)

Darlene Miller stated she represented herself and wished to express her support for the proposed revisions to the Clean Indoor Air Act. With the enactment of these revisions policy development can be more definitive for the protection against the exposure to tobacco smoke. She believes it is important for the proprietor or manager to have the right to prohibit smoking in an entire area. She encouraged passage of the proposed changes.

Robert Johnson of the Lewis and Clark County Health Department stated that his department strongly supports

passage of SB 426.

Karen Malisani stated she is a volunteer for the American Cancer Society. She provided an information booklet for the committee's attention (Exhibit #2).

Doug Brown, American Lung Association, stated he fully supports SB 426 amending the Montana Clean Indoor Air Act. He stated he feels the proprietor or manager of a public place should have the option of protecting the air quality of the entire establishment. He stated they receive many calls at the Lung Association asking how this may be done presently within the law. He requested a favorable recommendation on SB 426.

Peter Van Nice stated he is representing himself and is also speaking as an employer who is looking at changing the Indoor Air Act. He believes SB 426 clarifies the management position, and he urged passage of the bill.

Jerome Anderson, representing the Tobacco Institute, advised that this organization is funded by manufacturers and distributors of tobacco products across the United States. He stated they support this legislation on two grounds (1) the present statute allows the proprietor to do exactly what this bill suggests, and (2) because the statute in either form would promote freedom of choice, which is a freedom his group espouses in all programs and endeavors in the United States.

Jim Leiter, Chairman of a group called GUESS which is composed of 53 employees of the State Department of Health and Environmental Sciences, stated he is a proponent of SB 426, and they would like to see their agency vehicle be able to set a standard for the rest of Montana.

Tom Maddox of the Montana Association of Tobacco Distributors stated his position was basically to present written material and appear as a friend of the Committee. He submitted his written testimony (Exhibit #5).

Annie Bartos, Attorney, and member of the Board of Directors for the Montana Lung Association, stated the Lung Association exists for the prevention and control of chronic lung disease. For this reason they request that SB 426 do pass.

Persons who submitted written testimony in support of SB 426 but did not testify are as follows:

Mary Kay Hansen, R.N., Chairman, Rocky Mountain States Tobacco Free Challenge (Exhibit #6)
John R. Burgess, M.D., Rocky Mountain States Tobacco Free Challenge (Exhibit #7)
Donald Espelin, M.D., Chief, Preventive Health Services Bureau of the DHES (Exhibit #8)

Questions From Committee Members: Senator Pipinich asked Robert Moon where any lost revenue caused by passage of this bill would be picked up. Mr. Moon believed any loss of revenue in that area would be offset by savings in health care services.

Closing by Sponsor: Senator Rasmussen stated that he believed the case had been well presented, and with that he would close.

DISPOSITION OF SENATE BILL 426

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Rasmussen made a motion that SENATE BILL 426 DO PASS. Senators in favor, 7; opposed, 0.

HEARING ON SENATE BILL 454

Presentation and Opening Statement by Sponsor: Senator Mike Walker, Senate District #20, stated that SB 454 is a notification type bill dealing with personnel who are exposed to infectious diseases during transport of patients to health care facilities. The bill provides that emergency service providers exposed to infectious disease would be notified of measures necessary to prevent or control spread of the disease.

List of Testifying Proponents and What Group they Represent:

Drew Dawson, Emergency Medical Services Bureau, Montana Department of Health and Environmental Sciences
Rick Bandy, President, Montana EMS Association
Kathleen Cornelius, Fallon County Ambulance Service
Richard Seddon, Montana State Firemen's Association
Tim Bergstrom, Billings Fire Fighters Union
Art Bicsak, Montana Private Ambulance Providers
Bill Weber, Belgrade Fire Department, Halls Emergency Ambulance Service
Gary Haigh, Region 1B, EMS

ROLL CALL

PUBLIC HEALTH COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2/17/89

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Hager	X		
Sen. Tom Rasmussen	X		
Sen. Lynch	X		
Sen. Himsl	X		
Sen. Norman	X		
Sen. McLane	X		
Sen. Pipinich	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17 Bill No. 426 Time 1:05

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

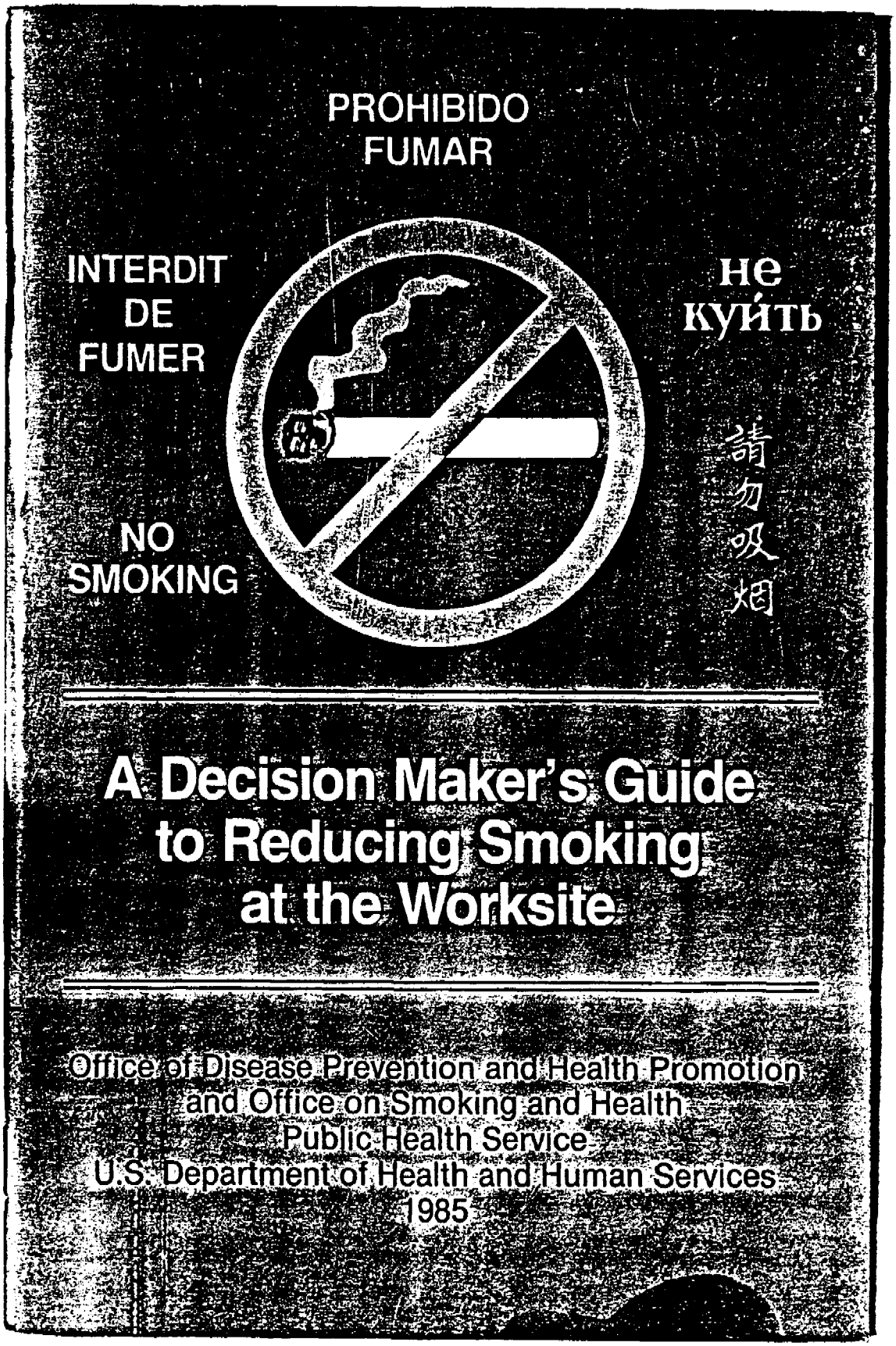
Sen. Tom Hager
Chairman

Motion: Sen Rasmussen made the motion that SB 426 C C be DO PASS.

Senators in favor 7, Opposed 0.

1987

SENATE HEALTH & WELFARE
EXHIBIT NO. # 2
DATE 2/17/89
BILL NO. SB #426



A Decision Maker's Guide to Reducing Smoking at the Worksite

Office of Disease Prevention and Health Promotion
and Office on Smoking and Health
Public Health Service
U.S. Department of Health and Human Services
1985

February, 1989

SENATE HEALTH & WELFARE
EXHIBIT NO. #3
DATE 2/7/89
BILL NO. 426

Testimony on Senate Bill 426

Mr. Chairman and members of this committee. I am Toni Jensen, Coordinator of the Rocky Mountain Tobacco Free Challenge, a federally funded program operated by the State Department of Health and Environmental Sciences. I am here today to speak on behalf of SB 426.

We have known for many years that involuntary smoke is extremely dangerous to nonsmokers in a number of ways. This is the reason we are so concerned about setting limits for smoking in the workplace.

The tobacco lobby would like you to believe that the tobacco issue has been sufficiently addressed--enough is enough--they continue to say. But I say that as long as there are people dying of lung cancer, dying of heart disease, dying of emphysema and other ~~smoking~~ tobacco related diseases--this issue will never die.

The tobacco lobby would also have you believe that we're not paying enough attention to smokers rights. Believe me, we pay a lot of attention to smokers--the cost to society of smoking related diseases is staggering. It is so ironic that the very people who are allies of the tobacco industry are the people most hurt by their products. As a result, we all have to suffer--the families, the co-workers, our overburdened health care system.

This bill provides for a minor change in the Montana Clean Indoor Act and gives what the tobacco lobby has been asking for--freedom of choice. Let employers and employees decide for

decide for themselves if they want a smoking policy. Let them designate a smoking area if they like, or as this bill states, give them the right to designate the entire area as smoke-free.

SENATE HEALTH & WELFARE
EXHIBIT NO. #4
DATE 2/17/89
BILL NO. 426

TESTIMONY FOR SENATE PUBLIC HEALTH WELFARE AND SAFETY COMMITTEE

Support SB 426 Allow proprietor to designate entire public place as nonsmoking area

Name: Karen Landers MD, Pediatrician from Helena

Representing: Self

As a pediatrician whose primary focus is the prevention of disease, I speak in favor of SB 426 which allows an entire public place to be designated as non-smoking by a proprietor or manager. Evidence suggests that passive smoke is not without effect. Despite clearly delineated smoking and non-smoking areas in public places, I have freqently found myself inhaling passive smoke. I would choose to patronize establishments which were entirely smoke-free were they available, and I think a proprietor or manager should have the option of doing so if he or she chooses. Please give SB 426 your do pass recommendation.

(This sheet to be used by those testifying on a bill.)

NAME: Tom Maddox DATE: Feb. 17, 1989

ADDRESS: P. O. Box 1 2 3, Helena MT 59624

PHONE: 442-1582

SENATE HEALTH & WELFARE
EXHIBIT NO. #5
DATE 2/17/89
BILL NO. SB 426

REPRESENTING WHOM? Montana Association of Tobacco and Candy Distributors, a nonprofit group of Montana family-owned small businesses.

APPEARING ON WHICH PROPOSAL: S B 4 2 6

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT: I ask the committee to turn to Chapter 40 the Montana Clean Indoor Air Act, section 50 - 40 - 104 (1) (a). This is in SB426 page 1 lines 17 and 18. The present law reads in part that the man in charge of a public area which is enclosed shall if he wishes the entire area designated as a nonsmoking entire area post a sign stating this. It doesn't even state that more than one sign is needed.

SB426 then would add at the end of this list of subsections a, b and c a sub (d) — refer to SB426, page 1 line 25 and page 2 line 1. This says what seems clear to be duplicating the same idea in other words.

It costs the tax payers somewhere in the area of about $700 for every bill in this session, and this appears to be a waste of the taxpayers money -

If on the other hand, this bill is intended to repeal 50-40-201 on state and local government buildings, then SB 426 is a backdoor approach.

The Montana family-owned independent small businesses distributing tobacco products ask that this committee recommend that SB426 DO NOT PASS.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE HEALTH & WELFARE
EXHIBIT NO. #6
DATE 2/17/89
BILL NO. SB 426

The Honorable Tom Hager, Chairman
Senate Public Health, Welfare
and Safety Committee

February 16, 1989

Mr. Chairman;

As Chairman of the Rocky Mountain States Tobacco Free Challenge and an Occupational Health Nurse, I am very much in favor of the Senate Bill #426 which would allow all businesses the opportunity to declare their entire areas "Smoke Free". There currently is no such provision in the Montana Clean Indoor Air Act causing confusion to many area businesses.

Many such businesses have already declared themselves "Smoke Free"in response to the many legal rulings which have been handed down regarding this subject (please see the attached). These same companies realize that it is <u>their duty as an employer</u>, to provide a safe and healthy working environment to their employees (common law responsibility) and feel that the only way to accomplish this is to provide totally smoke free areas. These companies are to be commended for their vision and should not live under a cloud waiting to be challenged on their smoking policy.

It is important to note that this only allows for the <u>option</u> and in no way limits the business to an unpopular policy.

This ambiguity has existed too long in the Montana Clean Indoor Air Act and it is time that this point was clarified, therefore, please accept this written testimony in <u>overwhelming support of Senate Bill #426</u>.

Thank you.

Mary Kay Hansen R.N.

Mary Kay Hansen, R.N.
Chairman- Rocky Mtn. States Tobacco Free Challenge

JD 1246
#6

SOCIAL ISSUES

OFFICE SMOKERS FEEL THE HEAT

Prodded by court rulings, many companies are creating tobacco-free work areas.
The war between the smokers and the nonsmokers has invaded the corporation.

A few companies - including IBM, 3M, and AT&T - have already bowed to militant nonsmokers and ceded them their own territory in offices and factories: areas free from the blue haze of cigarettes, pipes, and cigars. Many other companies, prodded by court decisions and stepped-up campaigns by antismoking health groups, will be forced to face the issue, sooner rather than later.

Basically, employees who do not want to be irritated by coworkers' smoke insist that companies have a duty to provide work environments unpolluted by tobacco. A New Jersey court upheld that argument in 1976 in a landmark case against New Jersey Bell Telephone Co., but only recently has it become a general rule. Within the past three months, three other courts - including the prestigious U.S. Court of Appeals in San Francisco - have imposed on employers the obligation to take reasonable steps to separate smokers from nonsmokers.

All three cases involved employees acutely sensitive to tobacco smoke. But "as a practicle matter, it is going to be very, very hard to draw a line" between those who are physically unable to work in smoky rooms and those who simply do not like doing so, says Washington lawyer John Banzhaf III, executive director of Action on Smoking and Health. Because it would consume too much time and money to take each case to court, Banzhaf says, "we're going to have to adopt general guidelines." Litigation will serve as an "or else" for companies loath to establish guidelines.

BOLDER ELEVATOR RIDERS. Banzhaf's group has lots of company. The American Lung Assn. earlier this year sent all local sections a guide on how to persuade companies to create nonsmoking sections. The Group Against Smoking Pollution of Massachusetts (GASP), in Boston, averages more than five requests a day from callers who want help in setting up tobacco-free areas where they work. Across the continent, the Berkeley-based Californians for Nonsmokers' Rights logs the same number of inquiries daily. When the California group recently polled its members to set lobbying priorities for the coming year, fully one-thrid of the 12,000 respondents wrote in a request for a law segregating smoking in the workplace - even though the survey had not listed such a choice.

For their part, some companies have come to feel that they have a responsibility to accommodate nonsmoking employees. With only a third of most workers now smoking, "you don't want to tell your majority, 'Well, the heck with you,'" says Robert N. Beck, executive vice-president at Bank of American in San Francisco. Written guidelines are essential, Beck says, to instruct line managers on how to respond when nonsmokers ask for protection, and the bank is now formulating its policy.

Minnesota, the nation's leader in this area, has had a workplace smoking law since 1975. It bans smoking in any enclosed area "serving as a place of work" other than sections specially designated for smokers. The statute has so emboldened antismokers that it is not unheard of for an elevator passenger in a Minneapolis office building to pluck a cigarette out of the mouth of someone ignoring the rule.

THE 10-PERSON RULE. Responding to the Minnesota law and employee complaints, Control Data Corp. in 1979 adopted an eight-page policy outlining the rights of smokers and nonsmokers. It separates work areas into smoking and nonsmoking sections, with work stations shifted around so that each employee works in the section he or she prefers. Ventilation systems are designed to waft air currents away from nonsmoking areas.

Other companies get even more specific. In West Palm Beach, Fla., for instance, the Government Products Div. of Pratt and Whitney Aircraft of Canada Ltd., a subsidiary of United Technologies Corp., sets a minimum distance of 4 ft. between smoking and nonsmoking areas and directs that in the cafeteria and dining room, the "size of the smoking area will not exceed that of the non-smoking area." American Telephone & Telegraph Co. says that when more than 10 persons are in a meeting, the room should be divided into smoking and non-smoking areas; in smaller gatherings, anyone may veto all smoking.

There are obvious costs to segregating smokers, including having to build walls between smoking and nonsmoking areas and increasing ventilation. But the antismoking lobby counters with figures of its own. William L. Weis, associate professor of business administration at Seattle University, took into account everything from the increased productivity of nonsmokers who feel better in a smoke-free environment to the longer life of office furniture unmarred by smoke to calculate that such segregation will save $243 per year per smoker.

'I TOOK MY ASHTRAY HOME.' Actually, half of all U.S. companies have formal policies curbing smoking, according to a 1979 survey by the federal government. But almost all of these concentrate on blue-collar areas, where smoking either would be hazardous - for instance, because of the presence of flammable chemicals - or would risk contaminating the product. Only 12% provided non-smoking areas in their dining facilities.

SB426
#6

For companies fearful that smoking bans in white-collar areas may create employee controversy, Harold K. Haug, manager of human resources for the Minneapolis-based Physical Electronic Div. of Perkin-Elmer Corp., has a hopeful message. The division limited smoking to two employee lounges back in 1974, he recalls, and no one objected "because it was so uniform," and no one has had to be disciplined since. As for Haug, "I took my ashtray home, and that was it."

BUSINESS WEEK: November 29, 1982 Social Issues

AMERICAN LUNG ASSOCIATION OF MONTANA
825 Helena Avenue
Helena MT 59601 442-6556

928 Broadwater, Suite 221
Billings MT 59102 256-0635

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Economics and Court Decisions Leading to Smoke-Free Workplace

Research on secondary smoke exposure gives rational basis for no-smoking rules

Is nonsmoking on the way to becoming the norm in the workplace? Momentum created by the courts, by legislatures, by public opinion and by cold, hard economic fact is moving in that direction. A dramatic example of a trend is the smoking policy of Boeing Company, Seattle. It is now the goal of this major corporation, employing 84,000 workers in nine plants in the United States, to bar smoking in the workplace. Boeing has set no date for this bold move. A company spokesperson told me management is moving slowly so as not to be oppressive to smokers. But, he adds, all new employees are being told about the target of a smoke-free environment.

Meanwhile, the company is sponsoring smoking cessation classes for employees, formalizing no-smoking areas in the plants, and letting individual employees and groups establish no-smoking work stations on a voluntary basis.

This major corporation's policy reinforces a prediction I feel safe in making: nonsmoking will become a requirement for employment, for placement, for promotion. It could be the basis for termination, although the serious effects of deprivation of livelihood would make such a step a very last resort.

My commentary last Fall on legal developments pertaining to smoking in the workplace ("Clearing the Smoke Through Law, Courts", OH&S , Sept. 1983, p. 54) ended by noting that employers were in a different position in trying to bar smoking completely. They run the risk of being charged with unfair labor practices if they discriminate against smokers.

By Charles R. Goerth, Esq., *attorney, Dugan, Carey & Goerth Ltd., Wilmette, Ill.*

BASIS. But the courts have generally been willing to accept discriminatory practices in any situation if they have a rational basis. And the rational basis for prohibiting smoking is building as more and more studies show the adverse health impact and the economic ramifications of smoking by workers. Among the findings:

- Smokers have higher absentee rates than nonsmokers;
- Smoking-related illnesses lead to disability claims and death benefits.

The American Lung Association puts a price tag of $25 billion annually on lost productivity, lost wages and absenteeism. The ALA claims that more than 80 million workdays per year are lost due to smoking-related illnesses.

Nonsmoking will become a requirement for employment, promotion.

Accentuating the awareness of the hazard of cigarettes is the growing body of evidence showing that involuntary or passive smoking is having a previously unrecognized impact on nonsmokers. Nonsmokers inhaling what is being called sidestream smoke (fumes from the burning end of the cigarette, in contrast to mainstream smoke coming from direct inhalation) are exhibiting symptoms of smoking-related illnesses. Spouses of smokers appear to be affected by the fumes lingering in the home. Nonsmoking workers are even more affected because of the concentration of smoke fumes in the air throughout the working period. In addition, other studies are showing that smoking and exposure to certain chemicals in the workplace have a deleterious synergistic effect.

The economic impact of smoking on productivity is stimulating the creation of formal company policies which aim at discouraging smoking, encouraging nonsmoking and protecting nonsmokers from the effects of involuntary smoking. They include education programs on the dangers of smoking, making available what are being called cessation programs to help stop smoking, and setting aside designated smoking areas. Such company policies form the framework for future restrictions on the right of workers to smoke at all. In my view, the restrictions will eventually make nonsmoking a requirement for hiring as well as placement, promotion and continued employment.

ORDINANCES. Contributing to management's toughening stance on smoking are two other developments: state and local ordinances that restrict or bar smoking in public buildings, restaurants and places of employment; and, lawsuits against employers based on injury resulting from exposure to smoking in the workplace.

More and more communities are enacting ordinances which impose restrictions, including prohibition of smoking or segregation of smokers. Employers in those communities must comply, at the least, by setting up designated smoking areas with sufficient ventilation or air-movement barriers to protect nonsmokers from the fumes. Among the states and cities which have enacted some type of law or regulation are: California, Connecticut, Hawaii, Maine, Minnesota, Nebraska, New Jersey and Utah; and San Francisco.

The prospect of lawsuits by nonsmokers is looming in every company. Beginning in the mid-70s, a series of lawsuits by individual employees has established precedent for the right of workers to be free from exposure to cigarette smoke. The right has been based on the effect of smoking on the hypersensitive individual as well as the effect of involuntary smoking on nonsmokers. The courts have been viewing hypersensitivity as a handicap, bringing into play statutes protecting handicapped workers.

LIABILITY. "Legal liability is becoming a No.1 issue for personnel departments," The American Lung Association's A. Judson Wells told me. "They see such lawsuits coming from nonsmoking employees who object to smoking in the workplace. And they anticipate lawsuits in the future from employees claiming they were made ill by this workplace hazard which the company knew about but did nothing about."

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There are good precedents for such state responsibility and action. New York, New Jersey, Massachusetts and Maryland, among others, have restrained the health care costs their citizens pay going back to the 1970s.

Placing limits on budgets to make health care affordable doesn't mean simply scaling back traditional forms of health care and the organizations through which it is administered. Just the contrary. Innovations should be fostered. There needs to be fresh vision, a breaking of new ground. As an example, we can look at prepaid group practices which have demonstrated their cost-effectiveness through lower hospitalization and organized programs for primary care.

A fair and workable program of cost containment should not be targeted on vulnerable individuals and health institutions. The necessary controls must include all the pay-out sources: government, private insurance companies and individuals. At the same time, hospitals must be assured that they will be reinbursed appropriately for services to patients without adequate insurance.

In essence, what is being proposed here as an equitable and effective program of cost control is a complete 180-degree turnaround from the current direction of containment. This means control of *prices and volume of medical services*, not the curtailment of the benefits of public and private programs. By holding to this principle, we can assure the solvency of the Medicare trust fund without reducing benefits or raising taxes.

SAVING. Asking providers to tighten their belts instead of shifting costs is not a novel or untried suggestion. States that have placed controls on all payers have demonstrated that savings are possible without reducing access to care, or the quality of that care.

Money itself is not the main problem. We already are spending enough to enable every American to get the care he or she needs when and where it is needed.

The problem is the raging inflation in the health care structure that is threatening our present commitments and future goals. But even getting a handle on this inflation and reducing costs are not ends in themselves. They are only the means to an end. They are the essential tools to save Medicare without reducing benefits and increasing taxes.

There are two other desirable and attainable goals. Cost controls are a way to help relieve budget deficits; they can also be a prod to reform the way we now provide and pay for American health care.

Controlling health care cost escalation must be even-handed. As providers must be held accountable to a standard of social responsibility, so must they be assured of predictable and fair financial returns.

Such a far-sighted, broad-based program for redirection of our talents and resources will not easily be put in place. Entrenched interests can be expected to resist reforms, as they have succeeded in doing in the past. But there is a new force abroad in the land today—a coalition that includes, along with millions of concerned private citizens, broad representation of businessmen, labor leaders, insurance executives, hospital administrators and physicians who see the urgent need for change.

Through the combined efforts of all of these elements, the long-overdue containment of runaway health care costs can be achieved. Then, and only then, can we turn our resources toward the true advancement of our national aims and interests. OH&S

LEGAL PERSPECTIVE, *continued from page 24*

Wells is a retired scientist-manager from DuPont Co. who serves as a volunteer special assistant for the American Lung Association. He works with companies, helping them set up smoking policies and smoking-cessation programs.

"The literature is showing conclusively that some of the combustion products of cigarettes are toxic," he declares. "They are dangerous substances which are carcinogenic and addictive. The government refuses to ban them from the workplace. The tobacco industry has been successful in avoiding regulation by OSHA, the EPA and the FDA."

The tobacco industry is taking the offensive in fighting employee lawsuits as well as opposing statutory restrictions on smoking. The theory is that no rational basis exists for discriminating against smokers. The industry challenges statistics showing a strong correlation between smoking and employment costs.

The industry has been successful over the years in defeating product liability claims from people claiming injury from their own smoking. Will tobacco producers be equally successful in fighting the growing movement to ban smoking from the workplace? OH&S

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Developing Corporate Smoking Policies

by Susan E. Gaughan, MS, RN

Photo courtesy of Bader Health Associates

Employees say goodbye to smoking at company smoking cessation program.

Corporations are reeling from the staggering financial impact of rising health care costs. Worker health insurance policies currently cost the American employer over $60 billion annually (Ostwald, 1986). Since 1950, these expenses have steadily risen from 4.5% of the gross national product to 10.8% in 1983 (Ostwald, 1986). Currently, one out of every ten dollars spent in the United States pays for health-related services (*Personnel Journal*, January, 1984; 41-46) amounting to upwards of $360 billion per year (Ostwald, 1986). This establishes health care as the third largest industry in the United States.

Faced with the prospect of a continued escalation of 16% to 20% per year in health care costs (Ostwald, 1986), corporations are examining alternative approaches to reduce these expenditures. A new interest in wellness and preventive care has emerged as recent programs have begun to show that they can retrieve millions of dollars and help business check these soaring costs. One of the first companies to release a cost-benefit analysis of its health promotion plan was New York Telephone Company. For eight years, it conducted wellness programs that serviced 80,000 employees. Although the bill for the plan was over $2.84 million, a savings of $5.54 million was realized in employee absence and medical treatment, netting New York Telephone Company a $2.7 million profit (*Business Insurance*, September, 1981; 12-13). Interestingly, the most cost-effective program was the smoking cessation clinic. Workers who stopped smoking saved New York Telephone Company $645,000 in sick time and medical care for coronary disease and $1.4 million in pulmonary problems (*Business Insurance*, September, 1981; 12-13).

Just as health care costs have forced the business sector to re-examine its priorities, health care providers are also being asked to justify their services. Occupational health nurses have traditionally presented themselves as cost-effective providers. As financial concerns intensify and alternative professionals compete for the shrinking health care dollar, the nurse's ability to enhance corporate finances will remain an asset. This new interest within the industry to reduce costs by preventing disease may solidify the position of the occupational health nurse within the corporate framework.

The occupational health nurse should become an outspoken proponent of workplace smoking bans. Smoking cessation provides a unique model within the corporate structure in which all the players within the system are potential "winners." Improved employee health translates into healthier corporate pocketbooks, thus serving to affirm the role of the occupational health nurse as corporate advocate as well as employee advocate.

The occupational health nurse should actively promote institutional smoking ban policies. Understanding the financial and legal incentives that make this policy a timely one will enhance the position of the occupational health nurse within the corporate structure.

Despite dreadful statistics, almost 60 million Americans continue to smoke cigarettes (Kannel, 1981). Although there has been a downward trend in cigarette use, most pronounced among men, the percentage of heavy smokers has increased (Fielding, 1985a). Rates are rising for women under 25 (Slone, 1978), with adolescent girls taking up the habit in numbers comparable to boys (Rigotti, 1985). This pattern is alarming because multiple studies have confirmed that cigarette smoking is

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the dominant risk factor for myocardial infarction in young healthy women (Slone, 1978). This risk is five times greater among smoking women and ten times greater in those smoking 35 cigarettes per day (Rosenberg, 1983). In women who smoke and use oral contraceptives, this rate increases at least twentyfold, perhaps even fortyfold (Shapiro, 1979). Regardless of sex, cigarette smokers have twice the overall death rate of nonsmokers in all western societies (Kannel, 1981).

FINANCIAL INCENTIVES

In the United States, 40% of all adults still smoke, with health care costs of $8.2 billion and lost earnings of $19 billion annually (Rigotti, 1985). The U.S. Office of Technology Assessment further estimates that smoking-related illnesses cost United States businesses $43 billion in lost productivity each year (*Business Insurance*, September, 1986; 12-13). In establishing corporate hiring policies, little attention has been paid to the personal health habits of the worker. Conservative estimates place the hidden cost of hiring a smoker at $300 to $800 per year. These workers uniformly require more health care benefits and are absent more days per year. Smokers also experience more cardiovascular incidents, cancers, emphysema, bronchitis, pneumonia, and other respiratory diseases (Fielding, 1985b).

William Weis, CPA, Associate Professor of Accounting at Seattle University, has conducted extensive investigations regarding the financial impact of workplace smoking policies. He projects that the cost consequences of employing smokers may approach $5,000 per smoker per year (*Personnel Administrator*, May, 1981; 71-78) for the following reasons.

- **Absenteeism.** 45% greater for women smokers, 57% higher for men, approximately 2.2 days lost per year. At an average $20,000 salary an absence costs the employer $100 per day or $220 per smoker per year.
- **Mortality.** Rates are 70% to 270% higher. Health care utilization costs 50% more—$230 for medical care and $765 for lost earnings due to morbidity.
- **Insurance Costs.** The American Health Foundation estimates smokers cost $45 per year for accidental injuries and workers' compensation claims due to careless smoking. Also, smokers cost an additional $45 each year in insurance premiums for fire, life, and wage continuation.
- **Productivity Loss.** Time lost to smoking (lighting, puffing, etc.) may range from 8 minutes per day to 30 minutes per hour for cigarette smokers (average 30 minutes per day) to 55 minutes per day for pipe smokers. This translates into 18.2 days lost per year per smoker. For jobs where tools go down when people light up, this time/cost figure is substantially higher.
- **Property Damage, Depreciation, and Maintenance.** Furniture replacement intervals can be tripled with nonsmokers. Patching burns can cost as much as $100 per incident. Routine cleaning can be cut by 60% with smoking bans. Wall and window washing and repainting costs can be reduced by two-thirds ($500 per smoker per year).
- **Involuntary Smoking.** White and Froeb (1980) feel nonsmokers suffer one-fifth the damage to small airway function that smokers do if they work beside them. One-fifth cost of medical care, morbidity, and mortality equals $243 per nonsmoker per year. Since two out of three workers are nonsmokers, this translates into $486 per smoker per year.

Also attributable to smoking is the loss of 81 million work days annually and 145 million sick bed disability days per year (US Department of Health and Human Services, 1986).

Early retirement and disability payments are also adversely affected by employees who smoke. Three-fourths of all early retirees smoke cigarettes. These people have been shown to be six times more likely to become disabled (*Small Business Report*, 1986; 11(12):71-77). These data coupled with health and insurance premiums that can be reduced by up to 70% for nonsmoking firms make a nonsmoking policy highly attractive.

British firms are beginning to alter their attitudes regarding smoking.

[redacted]

Smokers uniformly require more health care benefits and are absent more days per year.

[redacted]

Examination of the data reveals that, in Britain, the amount of worker time lost through sickness due to cigarette smoking is more than four times that lost through strikes. People who smoke more than 20 cigarettes per day take twice the amount of sick time as nonsmokers; 40% of heavy smokers die before retirement, as compared to 15% of their nonsmoking British counterparts (*Chief Executive*, July, 1985; 22-23). Since heart disease is the leading cause of death in the United Kingdom, concerns for employee health have increasingly fostered smoking bans.

Canadian corporations have been feeling the negative effects of smoking as well. Some calculations suggest a minimum of $400 million is lost annually in the Canadian business sector from smoker absenteeism (*Canadian Manager*, 1982; 7(2):16-18). Other losses incurred by worker smoking are a 10% loss in salaries and up to 50% increased cost in cleaning, furniture depreciation, and disability

Carbon monoxide levels are three times higher in secondhand smoke, which causes headaches, eye irritation, and nasal problems.

benefits. Productivity is negatively affected by smoking as the process of smoking a cigarette consumes approximately 30 minutes a day or 2.5 hours per week for every smoker employed (*Canadian Manager*, 1982; 7(2):16-18). Since productivity can be significantly improved by hiring nonsmokers, smoking bans are receiving serious attention.

Radar Electric Company, a firm employing 90 workers, was able to reduce its workforce by five after instituting a smoking ban, saving $125,000 in salaries (*Canadian Manager*, 1982; 7(2):16-18). Some firms have reduced their annual cleaning costs by as much as $25,000 after instituting a ban.

American companies reporting the cost-effectiveness of smoking-cessation efforts include Metropolitan Life Insurance, Dow Chemical Company, Johnson & Johnson, Campbell Soup Company, IBM, New York Telephone Company, Ford Motor Company, and DuPont (*Small Business Report*, 1986; 11(12):71-77).

LEGAL INCENTIVES

Recent litigation has fostered a growing concern for the health hazards to nonsmokers working beside smokers, and consequently exposed to high levels of environmental smoke. Tobacco smoke can be either mainstream, that which is inhaled by the smoker, or sidestream, that arising from the burning tip of a cigarette. The latter contains a higher concentration of toxic substances and accounts for about 85% of the smoke found in rooms containing smokers (Fielding, 1985b). Carbon monoxide levels are three times higher with sidestream smoke, producing room concentrations of carbon monoxide and nicotine that exceed ambient air quality levels (Fielding, 1985b). Alarmingly, some studies have demonstrated that air pollutants in business offices allowing smoking are 10 to 100 times higher than outside environmental standards (*Small Business Report*, 1986; 11(12):71-77).

The most common symptoms arising in nonsmokers from passive smoking are headache, eye irritation, nasal symptoms, and cough. Passive smoke can also precipitate allergic attacks in people with respiratory allergies. Workers with angina become symptomatic more readily when exposed to passive smoke, and those with asthma have demonstrated a decline in pulmonary function (*Small Business Report*, 1982; 17(8):18-20). A study measuring nicotine in the urine and saliva of nonsmokers in a smoking work environment found levels equivalent to those in people who smoke one to ten cigarettes daily (Fielding, 1985b). In another study, nonsmokers working in smoking environments for eight hours a day had carboxyhemoglobin levels equivalent to smoking five cigarettes per day (Fielding, 1985b).

Continued chronic exposure to secondhand smoke has been associated with an increased risk for lung cancer. An Environmental Protection Agency (EPA) study suggests that 500 to 5,000 lung cancer deaths are caused each year by involuntary smoking. The EPA concluded that passive smoke is the country's most dangerous airborne carcinogen, posing a public health risk larger than that found in the combined effects of all industrial emissions (*Best's Review*, 1986; 86(10):112-114).

Workers exposed to cigarette smoke may have a greater risk of developing occupational respiratory diseases (Alexander, 1986). Cigarettes may become contaminated with occupational toxins or particulates and serve as vehicles for introducing this material into the mouth or lungs. Toxic agents found in the workplace may react synergistically with cigarette smoke to enhance the hazards found in the area. This has been demonstrated quite clearly with asbestos. Johns-Manville Corporation of Littleton, Colorado recently banned smoking in its 14 plants and announced that it would not hire smokers. The company stated that people who work with asbestos and smoke have a 92 times higher rate of lung cancer than nonsmokers (*Business Week*, May, 1978; 68). Since employers are obliged under the Occupational Safety and Health Act of 1970 to furnish each employee with a workplace that is free from hazards, elimination of smoking can be a central issue.

Recent information about the risks of involuntary smoking is making nonsmokers more assertive about their rights to breathe clean air. In the landmark 1976 case *Shrimp v New Jersey Bell Telephone*, a service representative filed suit to win a smoke-free workplace. The courts awarded Shrimp a smoke-free lounge, bathroom, and work area (*Industry Week*, February, 1982; 101-102). The 1982 Missouri Appellate Court decision *Smith v Western Electric* sustained the employee's right to a smoke-free environment (*Best's Review*, 1986; 112-114). Rulings in California allowed an employee of the Social Security Administration to collect 75% of his salary for a disability due to involuntary workplace smoke, and an airline stewardess was awarded a cash settlement for a disability resulting from in-flight smoke (Knuth, 1986).

The increasing threat of litigation is forcing companies to re-examine their smoking policies. If chronic exposure to tobacco smoke can result in occupational disabilities, then the time has come for corporations to prohibit smoking, to encourage smokers to quit, and to refuse to hire smokers. Employers have the legal right to restrict smoking on company premises and to avoid hiring smokers. These practices are not considered

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by the courts to be discriminatory and no legal barrier exists to date to prevent a company ban (*Personnel Journal*, 1984; 63(9):53-58).

The state of Oregon was the first to enact an Indoor Clean Air Act in 1983. This act prohibits smoking in public places except where specifically designated. Twenty-five other states have followed suit (*Best's Review*, 1986; 112-114). The Senate Government Operations Subcommittee is considering legislation that would restrict smoking in federal buildings and fine offenders up to $500 per violation (*Best's Review*, 1986; 112-114). In a survey conducted by the Bureau of National Affairs, 36% of all companies currently have some form of nonsmoking policy (*Business Insurance*, September, 1981; 12-13). Seventeen states and dozens of cities in the United States have passed laws restricting smoking in offices and other public places (*Small Business Report*, 1986; 11(12):71-77). Another 23% are considering bans. In a letter to its 800 member companies, the American Council of Life Insurance and the Health Insurance Association of America urged the adoption of a nonsmoking policy for their employees (*Best's Review*, 1986; 112-114).

COMPANY POLICIES

To implement these changes, many firms offer smoking-cessation programs that support employee efforts. Metropolitan Life Insurance Company founded its Center for Health Help in 1979, and selected smoking as the first cardiovascular risk factor to be addressed. Two thousand four hundred employees smoked, and a variety of programs were offered to help them quit. Metropolitan estimated that smokers cost $336 to $601 per year in expenses, plus 33% to 45% extra in absenteeism. After a four-year campaign to reduce smoking, Metropolitan declared a six dollar return for every one dollar it invested in smoking cessation (Employee Benefit Plan Review, 1986; 41(4):68-72).

Texas Instruments, Incorporated, prohibits its 20,000 employees from smoking in all work areas except for one lounge per facility (*Business Insurance*, September, 1984; 12-13). When the company initiated this policy, the number of people participating in the smoking cessation classes increased tenfold.

Other companies have also taken a strong position to discourage the 30% to 40% of their employees who smoke. Connecticut Mutual has banned smoking from common areas for over two years and is now planning to establish a smoke-free workplace. Aetna Life and Casualty has limited smoking in general access areas, with smoking in private offices only if nonsmokers agree. New England Life forbids smoking in conferences and classrooms. The management dining facility is smoke free and the employee cafeteria has a small smoking area. To support the efforts of smokers, these companies subsidize smoking cessation programs for both employees and their spouses (*National Underwriter*, 1985; 89(40): 28-29).

Sentry Insurance introduced a new smoking policy to its 10,000 employees as a result of concerns expressed by various employees. The company has an extensive wellness program and was experiencing conflict between smokers and nonsmokers. In concern for the health of its employees, a policy that favored nonsmokers was established. Smoking was banned in meetings, conferences, restrooms, and most areas of the cafeteria, while limiting smoking to individual desks. Air quality was monitored and smoking cessation programs were offered to both employees and their family members (*Personnel Administrator*, 1984; 29(12): 12-14).

Pacific Northwest Bell Telephone Company, with 15,000 employees, bans smoking in all of its facilities. The company offers several techniques to help its employees quit, including acupuncture, hypnosis, behavior modification, aversion therapy, nicotine gum, motivational training, and vitamin therapy (*Business Insurance*, September, 1984; 12-13). Prior to the ban, 231 people took advantage of these programs. In the first 18 months of the ban, 1,591 employees and spouses participated. The average cost of these programs per employee was $140, for a total cost of over $224,373. The company normally spends $50 million on group health care benefits per year (*Business Insurance*, September, 1984; 12-13). Since smoking is the number one cause of preventable disease, Pacific Northwest Bell Telephone Company expects to realize considerable savings in future health care benefits through its investment in smoking cessation.

Cigna Health Plan of Arizona, a health maintenance organization

Smoking Statistics

Cigarette smoking remains the single largest source of preventable morbidity and mortality in the United States.

- Smoking contributes to an estimated 360,000 premature deaths annually.*
- Approximately 30% of annual deaths are from coronary heart disease, which is linked to smoking.
- Approximately 30% of annual cancer deaths are smoking related.
- 62,000 deaths are from smoking-related chronic obstructive lung disease.
- Fires caused by cigarettes claim approximately 1,500 lives annually.

**This figure exceeds the total number of Americans killed in Vietnam, Korea, and World War I combined.*
Fielding, 1985a.

employing 2,000, felt that to be in the health maintenance business and not protect its own workers was contradictory. Consequently, it banned smoking in all of its facilities (*Business Insurance*, September, 1981; 12-13). Stride Rite Corporation in Cambridge also banned smoking in all of its plants due to health and welfare concerns (*Business Insurance*, September, 1981; 12-13). On April 27, 1984, Boeing Company became the largest corporation in the United States to provide a smoke-free work environment. President Malcolm Stamper realized that the company was providing a better atmosphere for its high-tech machinery than it was for its 85,000 employees. Prior regulations regarding smoking were in areas where drifting smoke posed a hazard to delicate computer equipment or food processing facilities. Only recently have such issues as employee health, morale, and productivity begun to impact smoking policies (*Personnel Journal*, 1984; 63(9):53-58).

Boyd Coffee Company in Portland, Oregon, banned smoking for all employees, visitors, and customers because of rising concerns about passive smoking and because tobacco spoiled the aroma of roasting coffee beans. Perhaps because of the swiftness of the change, the local Teamsters Union filed a grievance. Boyd had wanted to limit smoking to individual's cars, but binding arbitration ruled that the space was too confining and posed a health hazard. Consequently, smoking was permitted throughout the parking lot (*Personnel Journal*, 1984; 63(9):53-58). Unions usually do not challenge such bans as they are in favor of improved worker health and safety.

Changing attitudes are also being seen in the military where the Defense Department has established a goal of reducing smoking to 25% by 1990 (Knuth, 1986). New policy bans smoking at all times during basic training, in all auditoriums, classrooms, and conference rooms.

Westlake Community Hospital in Illinois has recently opted to create a positive role model by maintaining a smoke-free staff. The hospital now hires only nonsmokers and prohibits smoking in all offices and lounges. Client and visitor smoking is limited to specific areas and support is provided for smokers who wish to quit (Knuth, 1986).

Smoking Policies IN SUMMARY

Developing Corporate Smoking Policies. Gaughan, S.E. *AAOHN Journal* 1988; 36(9):354-360.

1. Health care costs continue to escalate, forcing corporations to consider the alternative approach of investing in wellness.
2. Instituting a nonsmoking policy has proven financial benefits for many companies. It also demonstrates concern for the protection of the nonsmoker from passive smoke.
3. There is a strong role for the occupational health nurse as an advocate for smoking bans, and as a supporting resource for the employee who wishes to quit.

EMPLOYEE INCENTIVES

Providing financial incentives is another technique that business has utilized to enhance smoking cessation. The immediacy of this reward may be more effective than the fear of health consequences that may take 20 years to develop. Cybertek Computer Products, Incorporated calculated that an average smoker cost them $675 a year in lost time (*Industry Week*, 1982; 212(4):101-102). Consequently, the company offered its employees a $500 "health bonus" if they quit smoking for a year. Thirty-two of the 140 employees have collected (*Business Week*, May, 1978; 68). Speedcall Corporation pays its workers a seven dollar bonus for each week they do not smoke. Last year, the company paid out $9,828 but was rewarded by its insurer with a 5% rate reduction in its employee health care plan. At Intermatic Incorporated in Illinois, President James Miller bet his 800 employees $100 each to stay off cigarettes for a year—25 collected. Workers at Norweco in Washington who do not smoke are paid an extra $10 per month. Reformed smokers at Neon Electric Corporation in Houston make 50 cents extra an hour. Bonne Bell Cosmetic Company in Lakewood, Ohio, pays its workers $250 after six smoke-free months and Merle Norman Cosmetics in Los Angeles has distributed $10 quarterly bonuses for not smoking (*Business Week*, May, 1978; 68).

Riviera Motors, Incorporated took a strong approach to reduce smoking among its 650 workers. It began a campaign to refocus attention on wellness, including smoking cessation classes, exercise programs, and health information. The company also gave a $200 bonus to each person who stopped smoking for a year. Four years later, the smoking rate was down from 48% to 17% (*Personnel Journal*, 1984; 63(9):53-58). Warren Freed, president of Mohoning Culvert Company, pays his employees $1,000 for a year and $500 for the second year of smoking cessation. Only four of the 19 original smokers continue (*Industry Week*, 1982; 212(4):101-102). The company believes the decrease in absenteeism, workers' compensation claims, and insurance claims are well worth the $17,000 program cost.

SUMMARY

There is little dispute regarding the dangers of smoking. The liter-

ature is replete with studies that repeatedly document the physiological effects of cigarette smoking. However, this knowledge does not seem to be well expressed in new behaviors. Millions of Americans continue to smoke, and many corporations continue to accommodate smokers.

New incentives introduced into the system, however, are beginning to produce a shift in the balance. Rising price tags for health care have forced corporations to view smoking cessation and employee wellness as cost-effective mechanisms for financial control. Numerous companies have discovered that the smokers are too expensive to maintain. Not only are they less healthy and less productive, but they have become an occupational hazard to coworkers. The recent fear of litigation seems to have tipped the scales in favor of the nonsmoker.

The time is ripe for nonsmoking to become a corporate policy. The occupational health nurse is in a position to spearhead this drive. Few opportunities afford the nurse such a chance to serve both the employee and the employer without bias. Smoking cessation is a vehicle for improved employee health as well as enhanced corporate finances. The future viability of the occupational health nurse's role may depend on her ability to maximize just such opportunities.

REFERENCES

Alexander, L. Smoking and smoking cessation. *AAOHN Journal* 1986; 34(8):383-387.

Anonymous. No smoking: A profitable policy. *Small Business Report* 1982; 17(8):18-20.

Fielding, J.E. Smoking: Health effects and control (Part I). *Medical Progress* 1985a; 313:491-498.

Fielding, J.E. Smoking: Health effects and control (Part II). *Medical Progress* 1985b; 313:555-561.

Kannel, W.B. Update on the role of cigarette smoking in coronary artery disease. *American Heart Journal* 1981; 101:319-328.

Knuth, G., Parker, J. Workplace smoking policy. *AAOHN Journal* 1986; 34(12):590-595.

Ostwald, S. Cost-benefit analysis. *AAOHN Journal* 1986; 34(8):377-382.

Rigotti, N., Tesar, G. Smoking cessation in the prevention of cardiovascular disease. *Cardiology Clinics* 1985; 3(2):245-257.

Rosenberg, L., Miller, D., Kaufman, D., Helmrich, S., VandeCarr, S., Stolley, P., et al. Myocardial infarction in women under 50 years of age. *JAMA* 1983; 250:2801-2806.

Shapiro, S., Rosenberg, L., Slone, D., Kaufman, D., Stolley, R., Miettinen, O. Oral-contraceptive use in relation to myocardial infarction. *The Lancet* 1979; 1(8119): 743-747.

Slone, D., Shapiro, S., Rosenberg, L., Kaufman, D., Hartz, S., Rossi, A., et al. Relation of cigarette smoking to myocardial infarction in young women. *New England Journal of Medicine* 1978; 298:1273-1276.

United States Department of Health and Human Services. *The Health Consequences of Involuntary Smoking.* A Report of the Surgeon General, 1986.

White, J., Froeb, H. Small airways dysfunction in nonsmokers chronically exposed to tobacco smoke. *New England Journal of Medicine* 1980; 720-723.

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APPENDIX B

AMERICAN LUNG ASSOCIATION
The Christmas Seal People

SMOKING AT THE WORKPLACE

The Changing Legal Situation

THE LEGAL SITUATION: AN OVERVIEW

Employers--in increasing numbers--are asking for guidance about their legal responsibilities relating to smoking in the workplace. And nonsmokers inquire about their legal rights on the job.

This general summary is not a legal treatise but instead provides an overview of the legal situation as of mid-1983. None of the information should be considered as a substitute for legal counsel or as in-depth reporting of legislation on the issue, which varies in states and localities.

Lung Associations are educational organizations and do not counsel employers or employees about legal actions. However, the American Lung Association believes it is important for everyone involved in worksite settings to understand how rapidly the legal situation concerning smoking is changing.

Numerous compensation awards for unemployment, disability, and medical retirement have been made to nonsmokers. Union grievances--even at the arbitration level--have been won by nonsmokers. Every employer permitting smoking in work areas could be vulnerable to all these legal actions by nonsmoking employees.

- The 1976 case of Shimp vs. New Jersey Bell--the first legal challenge to smokers in the workplace--is the cornerstone of a growing body of law which favors the right of the nonsmoking employee to a work environment free of tobacco smoke. Legal opinion rendered in civil actions and

administrative law cases has unanimously accepted the legal and medical definition of tobacco smoke as an occupational health hazard.

An employer's liability actually increases by permitting workplace smoking. In every state except Louisiana the employer is subject to civil action under the common law duty to provide a work environment reasonably free of recognized hazards and to protect the employee from avoidable perils.

In addition, the National Rehabilitation Act of 1973 requires reasonable accommodation for nonsmokers who qualify as handicapped when exposed to secondhand smoke.

- What is an employer's liability if smoking is restricted? Can smoking be banned?

- May an employer hire only nonsmokers without jeopardy?

These two questions are being asked more frequently. The answer to both is that the employer is much more likely to be sued successfully by the nonsmoker than the smoker.

There is no legal precedent for a smoker prevailing in a quest to harm co-workers by smoking. The courts have never yet supported anyone's right to impose a health risk on others. In our courts anyone can seek to file suit; but the consensus of legal opinion is that no smoker would prevail in the legal climate today, unless a labor contract was violated.

This appears to be the current legal consensus: When no labor contract exists, the employer has the right to eliminate smoking on company premises and--even--hire only nonsmokers.

EXISTING LABOR CONTRACTS

What is the employer's legal right to implement a smoking ban in all work areas when a labor contract exists?

Some lawyers are of the opinion that the employer has a duty to bargain before making a unilateral decision to initiate the policy--if the union does not concur with the policy. The reason lawyers give is that a smoking ban would constitute a change in conditions of employment, or working conditions.

The majority opinion, however, is that on the basis of eliminating an existing hazard an employer can make a unilateral decision without bargaining unless there is specific language in the contract outlining the right to smoke in certain areas or at certain times.

It is good advice to the employer, however, to include the union in formulating guidelines since its support (or at least neutrality) can be helpful in molding employee attitudes.

- The widely reported Johns-Manville cases ended in the courts because the company banned smoking on the premises, and the union claimed a contractual right to smoking areas. One case was heard in Massachusetts, where the judge ruled in favor of the ban that the company had an obligation as well as a right to protect its employees on company premises. The other, in contrast, was won in Texas by the union when the court ruled that the company had to provide smoking areas for breaks--as a consideration for addicted employees (this one is being appealed by the company).

- An April, 1983 decision by the Commonwealth of Pennsylvania Court is a good example of what can happen if an employer does not mount an educational program before implementing a smoking restriction policy--and does not make a case for the health hazards of passive smoking. The Venango County (Pa.) Board of Assistance was first advised by the Pennsylvania Labor Relations Board--and then by the Commonwealth Court--that it must rescind its smoking restriction policy because it had "violated its statutory obligation to bargain (with the union) a change in working conditions."

Although the Board presented little evidence of the health risk to nonsmokers as the basis for its action, the dissenting judges in the split decision (4 to 3) based their dissent on the existence of a health hazard.

Legal opinion is that the Board would have won if it had made a stronger case for the health issue. (Several years ago the same court ruled in favor of the Chambersburg School Board's smoking ban because the health issue was a primary factor and the teachers were seen as role models.)

- A lack of health evidence was the significant factor also in another ruling, this one by the District of Columbia Court of Appeals on May 5, 1983 in the case of Adel Gordon vs. Raven Systems & Research Inc. While Ms. Gordon did present some evidence as to her own sensitivity to second-hand smoke, she "presented no scientific evidence of the deleterious effects of tobacco smoke on nonsmokers in general." The Court contrasted the case to the Shimp case, stating that "in Shimp the court took judicial notice of a plethora of scientific studies and affidavits of medical experts before concluding that cigarette smoke posed a serious health threat to all workers." The message to be learned from this case is that any petition for accommodation of a non-smoking employee should be based on the premise that passive smoking is harmful to everyone in general and the sensitive nonsmoker in particular.

The only defense offered--by smokers or unions--in the common law suits has been that of "OSHA pre-emption," an argument stating that the courts should not rule but require the employee to seek relief through OSHA. Since OSHA has no standards for tobacco smoke, the courts have unanimously agreed that the common law can be used to give protection to employees in jeopardy.

PROTECTION OF NONSMOKING EMPLOYEES

The legal situation in which an employer places himself or herself by permitting workplace smoking can be divided into several categories. While there are many other cases in each category than those listed here, the cases used in this summary are those which best illustrate the issues.

Common Law

The common law responsibility is clearly defined as requiring the employer to provide a work environment reasonably free of recognized hazards. Any employer who has exhausted administrative remedies (formal requests to management for a smoke-free work area and the grievance procedure if a union is involved) can then seek protection from the court in a civil suit if no standards or policy exist.

- In 1976 the first case to use this old premise of common law to deal with tobacco smoke was Shimp vs. New Jersey Bell. Mrs. Shimp won a permanent injunction in the New Jersey Superior Court requiring the telephone company to restrict smoking in all work areas and confine smoking to a designated lounge. There was no appeal and the case has since been the basis of all legal decisions favoring nonsmoking workers.

- In 1982 an appellate level decision in the Missouri courts in the case of Smith vs. Western Electric upheld the findings in the Shimp case, sustaining the employee's right to sue under the common law for a smoke-free work environment. That case will be reasserted at the trial level in 1983, unless the employer decides to make the necessary accommodation for the plaintiff, Paul Smith.

  This means that Mr. Smith can bring suit at any time unless his employer decides to make his working environment hazard-free. Since there was no argument about the medical evidence of second-hand smoke's deleterious effect--and the appellate court strongly upheld the plaintiff's right to ask for protection from the smoke--it is expected that the plaintiff would win if he is forced to sue.

  Other cases have been filed under the common law in Massachusetts and New Jersey; hundreds have been settled by mutual agreement before being filed in a number of states.

Rehabilitation Act of 1973

This Act requires employers to make "reasonable accommodation" for handicapped employees; and two recent federal decisions have declared employees--who are extremely sensitive to secondhand smoke--as handicapped.

- In the August, 1982 case of Vickers vs. Veterans Administration et al in Seattle, Washington, the nonsmoking employee who had an adverse reaction to tobacco smoke was granted handicapped status and the employer was seen as having made reasonable accommodation by significantly reducing the amount of exposure (relocating his desk, asking smokers nearby to refrain, opening window, etc.).

The Merit Systems Protection Board had set the precedent for such a decision by ruling in June, 1981 that Leroy Pletten of Warren, Michigan was handicapped (Pletten vs. U.S. Army). Experiencing asthma episodes in the presence of tobacco smoke, Pletten was granted reasonable accommodation which prohibited smoking in his entire Division where he as a civilian personnel specialist. Even though other administrative procedures have prevented Pletten from returning to work in the smoke-free environment, the ruling stands as precedent.

Most employees who are impaired only in the presence of tobacco smoke seem to reject the handicapped label and seek another course. Nevertheless employers should be advised that discrimination suits can be brought against them by nonsmoking employees. Employee claims can be filed directly with the Equal Employment Opportunity Commission of a state or the Federal government, or suit can be brought directly in the courts.

Administrative Law

Unemployment and Worker's Compensation

Since 1976 employees in increasing numbers are being awarded claims for passive smoking illnesses and loss of jobs.

- Harriet Brooks vs. Trans World Airlines & Liberty Mutual Insurance paid worker's compensation to an airline stewardess in 1976 because she "sustained an industrial injury" caused by an allergic reaction to the inflight cabin air containing tobacco smoke.

- In 1981 a New Jersey secretary was forced to resign her job as she suffered severe eye irritation and headaches from constant exposure to second-hand smoke (Linda A. Apell vs. Moorestown Board of Education). She was found to have had "good cause attributable to the work for voluntarily leaving such work" and was awarded unemployment compensation on appeal.

Disability

The first disability case awards were in 1976 and 1977 and have been used as precedent in succeeding cases. In California the Supreme Court ruled that an employer was liable for one-third of the disability award made to a man with emphysema because the employee had been on the job that portion of each 24-hour day--and had been permitted by the employer to inflict this harm on himself (Fuentes vs. Workmens Compensation Appeals Board).

A senior Social Security Administration employee in Baltimore was awarded 75% of his salary in compensation for physical ailments caused by passive smoking, even though he could perform the job if the smoke had been eliminated.

- Filed in 1980, the case of Irene Parodi vs. the Merit Systems Protection Board was finally decided in 1982 in California when Ms. Parodi was granted disability retirement unless the government offered her a "suitable job" within 60 days. The reason for the decision in her favor was that she could not "perform her job due to its location in a smoke-filled office." The Defense Logistics Agency had consistently refused to relocate her, restrict smoking, or grant her disability retirement.

Dismissals

Employers today are on shaky ground if they dismiss without other cause any nonsmoking employee who complains about having to work in a smoke-filled environment.

- In 1981 a Minnesota jury (composed of three smokers and three nonsmokers) awarded social worker June Anderson approximately $4,500 in compensatory and punitive damages for having been fired after she complained to her department head about the "cloud of smoke" in her office. She also complained to the Health Department, which cited the agency with violations of the Minnesota Clean Indoor Air Act; Ms. Anderson's retaliatory termination followed.

- The case of Hentzel vs. Singer Corporation, filed in California in 1982, stated that patent attorney Hensel was fired for complaining constantly about a smoke-filled work environment. He filed suit on the basis that he had not been dismissed for just cause; his position was upheld by the appellate court and a trial will be held in mid-1983 to seek reinstatement. The appellate court also indicated that he could sue for monetary damages as a result of "intentional infliction of emotional distress" by management in harassing him about the smoking issue.

This growing protection for nonsmokers is important since many fear to file any action or even make formal complaints to management because of the threat of dismissal. The professional or managerial employee appears to be especially vulnerable to retaliatory actions that can be disguised as unrelated to the smoking issue--and thereby escape the protection of the court or administrative law agency. The trauma of entering into any kind of open adversary relationship with an employer, always with the fear of dismissal present, seems to be the reason so few cases have ever reached the courts.

Labor Union Activity

Until recently, labor unions have not represented the health rights of nonsmokers; but the tide is turning. Many unions willingly represent nonsmokers in seeking smoke-free work environments where regulations or policy exists. In situations where there is no stated policy, unions usually seek special accommodation for the nonsmoker rather than ask for a restricted smoking policy. Unions such as the American Federation of Government Employees and the National Treasury Workers Union have carried cases to arbitration (a procedure where impartial labor law professionals hear both arguments and render a decision, which is normally binding on all parties).

One such case is that of Margaret Wells, an employee of the Department of Labor and member of the American Federation of Government Employees. Wells is acutely sensitive to tobacco smoke. She was granted interim relief by an arbitrator to protect her in the workplace while the case is being heard. A 1983 decision is expected; and lawyers for ASH (Action on Smoking and Health) are representing both Wells and the union in the proceedings.

Of great concern to organized labor are decisions such as the 1981 ruling in the North Carolina Supreme Court stating that a textile worker need not be compensated for the portion of her disabling lung condition caused by her own smoking. Elsie Morrison's condition--byssinosis or "brown lung"--was caused by her exposure to cotton dust but exacerbated by her smoking for at least 20 years; and her compensation award was cut almost in half. Labor's fear is this: its recognition of the hazards of smoking will conflict with its constant battle to eliminate industrial pollution and to win compensation for members with industrially-caused respiratory disease.

LEGAL ACTIONS BY SMOKERS

The only case in the courts today involving a smoker challenging a ban on workplace smoking is in Massachusetts.

- In January 1983 suit was filed by an exemplary nonsmoking employee of the State of Massachusetts (Marie Lee vs. Massachusetts Public Welfare Department), seeking a ban on work area smoking. Lee won a temporary restraining order on January 12 on the basis of her affidavit and that of her allergist attesting to the medical harm she was suffering.

When court reconvened on January 20 so the judge could determine if he should continue the restraining order until the trial date, a smoking employee was permitted to intervene formally. (It should be noted that anyone affected by litigation has a legal right to assert a claim--even if it is not a "good" one.)

In this case the smoking employee asked that the restraints be lifted because as an addicted cigarette smoker she could not perform her work without jeopardy in a smoke-free environment. When the judge did permit smoking again in Lee's workplace until a trial was held, many observors were stunned.

The majority legal opinion is that the judge felt Lee would not suffer "irreparable harm" by working in a smoky environment until the trial date and that it is not unusual to lift restraints when another claim is asserted. The trial will be of keen interest as the smoker stated at a press conference that she is represented by three law firms associated with the Tobacco Institute and that the Tobacco Institute is paying all legal expenses.

Banning Smoking

The consensus of legal opinion is that a smoker could not file a winning suit against an employer who chose to ban smoking in work areas, unless an existing labor contract--with specific smoking language--was violated.

When lawyers at the Equal Opportunity Commission in Washington were questioned about the possibility of discrimination suits filed by smokers, they could see no way such a claim could be sustained. There were no other viable courses of action by smokers which were considered worthy of consideration.

Hiring Nonsmokers

The question of hiring only nonsmokers receives a similar answer relative to potential litigation: it is most unlikely a smoker's suit would prevail.

There is especially solid ground for not hiring smokers when aerobic capacity is a factor affecting job performance or when the risk of fire is great. The concept is presently being tested in the California courts relative to a San Mateo Fire Department decision not to hire smokers and to initiate on-the-job restrictions for existing employees. The Fire Department's position is that smoking impairs job function through reduced lung capacity; and the Department is expected to prevail.

The desirability of an across-the-board rule not to hire smokers has won increasingly wide support in the business community for economic reasons. A good argument has been made that employers do have a right to hire those expected to perform the job most satisfactorily; and one key factor is good health. Previous employment information provided by job applicants would normally give some indication of a predisposition to impairment and substantiate a rejection on the basis of poor attendance or performance. If an applicant wants to quit smoking in order to be hired, this would then become a condition of employment and a return to smoking would constitute grounds for dismissal.

Bearing in mind that the legal system does permit anyone to file suit for any reason--no matter how frivolous it might appear--smoking employees can sue; but it is very unlikely, in many lawyers' opinions, they will ever be able to make a viable case for an addict seeking to harm others while indulging in a habit that costs the employer wasted time and money.

THE CLIMATE OF THE COURTS

Employees who have sought and failed to find relief in the courts--from smoking at the workplace--have done so because of some technical lack in the suit or because they chose the wrong premise of law. The suit by a Federal employees group in the late 1970's was lost because they had filed prematurely without taking prior administrative action.

The 1981 suit by Anthony Kensell against the State of Oklahoma Department of Human Services was filed on constitutional grounds and for monetary damages in both state and federal courts; the federal suit was denied and is on appeal while the state suit is held in abeyance. Majority legal opinion is that there is no constitutional basis for litigation in the occupational health setting.

In the common law setting, however, the tenor of the courts increasingly supports the right of the nonsmoker to seek relief without waiting until the exposure has resulted in "full-blown" disease or injury.

The most recent authoritative outline of the employer's responsibility is found in the unanimous 1982 opinion of the Missouri Appellate court:

> ". . . .the tobacco smoke of co-workers smoking in the work area is hazardous to the health of employees in general and plaintiff in particular. The allegations also show that defendant (employer) knows the tobacco smoke is harmful to the plaintiff's health and that defendant has the authority, ability, and reasonable means to control smoking in areas requiring a smoke-free environment. Thereby, by failing to exercise its control and assume its responsibility to eliminate the hazardous condition caused by tobacco smoke, defendant has breached and is breaching its duty to provide a reasonably safe workplace. . . ."

It is expected that such strong language from a court in a state considered conservative will have great impact on corporate decisions of the future and cause them to give even more consideration to the health needs of nonsmoking employees to avoid litigation.

Both employer and nonsmoking employees should become aware of this favorable climate in the courts to enhance the nonsmoker's chances of achieving a smoke-free work environment through negotiation. This information is intended as educational background rather than as encouragement of individual litigation. The heavy expenditure of time and money, coupled with the emotional strain reported by all those who have gone to court, make litigation a remedy to be used only as a last desperate resort.

SB 126
#6

THE ROLE OF LUNG ASSOCIATIONS

The American Lung Association believes it is important for everyone involved to understand how the legal situation concerning smoking at the workplace is changing. Those changes have an impact on management, unions, smoking and nonsmoking employees.

Long before any legal actions are considered, however, there are a variety of actions nonsmokers--who are distressed by smoking on the job--can take. They can encourage employers to establish company policies to protect nonsmokers; and Lung Associations can help companies select policies most appropriate for them.

Lung Associations can also acquaint managements and unions with the cases highlighted in this publication.

To encourage company policies, employees can speak to their supervisors and personnel departments. In a recent study of 10,000 nonsmoking office workers

- more than 50% reported difficulty working near a smoker
- another 36% said they were forced to move away from their desks or work stations because of passive smoking

Many personnel departments now report the issue of smoking at work is the single, most frequent complaint brought to management. And management is responding. Nonsmokers make up two-thirds of the workforce.

Employees can suggest that the company undertake surveys to find out how most employees feel about the issue, even what solutions they might propose. Employees, of course, can also take personal action: by letting co-workers know they are bothered by smoke and by putting signs at their desks requesting others not to smoke near their work stations.

Many companies--whether they have unions or not--have quality of worklife committees. Employees can submit ideas and ask that the issue of smoking be reviewed. When unions are involved--particularly if they have safety and health directors--the topic can be considered. Lung Associations may be able to provide key information about the hazards of secondhand smoke and assist management and unions to work together to develop policies to protect nonsmokers.

Although some companies still view the nonsmoker who is distressed as a trouble-causer, more and more companies now see smokers as the source of the particular problem. These companies have taken action to support the needs and requirements of the nonsmoker- when those conflict with those of the smoker. The shift is a dramatic one with long-term implications for a healthier, more smoke-free workplace.

Helping companies take these actions--and also offer effective, nationally tested programs to help smokers quit--are vital services Lung Associations can provide for companies across the country.

6/83

BIBLIOGRAPHY OF LEGAL CASE CITATIONS

Shimp vs. New Jersey Bell, 368 Atlantic Reporter 2nd 408

Smith vs. Western Electric, 643 S.W.2d 10 (Mo.App. 1982)

Hentzel vs. Singer Co., 188 Cal.Rptr. 159 (Apr. 1982)

Lee vs. State of Mass., Superior Court, Bristol County, Case No. 15385

Vickers vs. Veterans Administration, 549 F.Supp. 85(W.D. Wash. 1982)

Parodi vs. MSPB, 690 F.2d 731 (9th Cir. 1982)

Fuentes vs. Workmen's Comp. Appeals Board, 16Cal.3d 1:128CR 673: 41CCC42

Appell vs. Moorestown (NJ) Bd. of Education AT C81-3036 State of NJ Di[illegible] Unemp. Comp.

Brooks vs. TWA & Liberty Mutual Ins., 76 SF 257-975 Cal. WC Appeals Bd.

Gordon vs. Raven Systems & Research, District of Columbia Court of Appeals No. 81-1172 (5/5/83)

Commonwealth of Pennsylvania (Venango County Board of Assistance) vs. Commonwealth of Penna., Penna. Labor Relations Board, No. 2167 C.D. 1980 (Commonwealth Court Opinion released 4/28/83)

-- This general summary was prepared for ALA with special assistance from Environmental Improvement Associates --

SENATE HEALTH & WELFARE
EXHIBIT NO. #7
DATE 2/17/89
BILL NO. SB 426

The Honorable Tom Hager, Chairman
Senate Public Health, Welfare
and Safety Committee

February 16, 1989

Mr. Chairman;

As a member of the Rocky Mountain States Tobacco Free Challenge, I am very much in favor of the Senate Bill #426 which would allow all businesses the opportunity to declare their entire areas "Smoke Free". There currently is no such provision in the Montana Clean Indoor Air Act causing confusion to many area businesses. Many such businesses have already declared themselves "Smoke Free" and are concerned about the possibility of being challenged on the subject because they are not operating under the guidelines of the law as it now reads.

It is important to note that this only allows for the option and in no way limits the business to an unpopular policy.

This ambiguity has existed too long in the Montana Clean Indoor Air Act and it is time that this point was clarified, therefore, please accept this written testimony in overwhelming support of Senate Bill #426.

Thank you.

John R Burgess M D.

Dr. John R. Burgess, M.D.
Rocky Mtn. States Tobacco Free Challenge

February 1989

SENATE HEALTH & WELFARE
EXHIBIT NO. #8
DATE 2/17/89
BILL NO. 426

Testimony on Senate Bill 426

Mr. Chairman and Members of the Committee, I am Dr. Donald Espelin, Chief, Preventive Health Services Bureau of the State Department of Health and Environmental Sciences.

I am writing in support of Senate Bill 426, a bill that deals with the use of tobacco as a public health and safety issue.

We have known for many years that involuntary smoking is extremely dangerous to non-smokers. A study by A. Judson Wells, Ph.D., entitled, "An Estimate of Adult Mortality In The United States From Passive Smoking" was released on December 2, 1988, in the journal, Environmental International.

Wells calculates that an estimated 46,000 deaths occur each year in this country from diseases induced by passive smoking. He further breaks this figure down by specific diseases: 3,000 deaths due to lung cancer; 11,000 deaths due to other cancers; and 32,000 deaths due to heart disease. Wells' study, a new statistical evaluation of existing data, is not based in original experimental research, but on exhaustive review and analysis of past studies. This study is yet another affirmation of the conclusion of the U.S. Surgeon General's Report of 1986, that stated environmental tobacco smoke is harmful to non-smokers.

Senate Bill 426 effectively and simply, provides for those interested in designating an area completely smokefree, an opportunity to do so. Simply stated, smokers have a right to create their own gas chamber, but they don't have a right to trap others in it.

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United States
Postal Service

SENATE HEALTH & WELFARE
EXHIBIT NO. #21
DATE 2/17/89
BILL NO. SB #426

February 17, 1989

Senator Tom Hager
Chairman Public Welfare and Safety Committee
State Capitol
Helena, MT 59620

Dear Senator Hager;

I support Senate Bill #426 "An act to revise the Montana Clean Indoor Air Act...".

The U. S. Postal Service has implemented a very strict nation wide smoking policy, with excellent results.

Thank you.

Thomas E. Heyes
Safety Specialist
U. S. Postal Service
1100 W. Kent
Missoula, MT 59801-9994

United States
Postal Service

SENATE HEALTH & WELFARE
EXHIBIT NO. #22
DATE 2/17/89
BILL NO. SB 426

February 17, 1989

Senator Tom Hager
Chairman Public Welfare and Safety Committee
State Capitol
Helena, Mt. 59620

Dear Senator Hager;

I support Senate Bill No. 426, "....to allow the proprietor or manager of an enclosed public place to desiginate and reserve the entire area as a nonsmoking area...."

We have implemented a non-smoking policy at the Helena Post Office with positive results.

Thank-you.

Earl Dorsey

E. D. Dorsey
Postmaster
U. S. Postal Service
Helena, Mt. 59601-9998

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

Public Health

DATE: 2/17/89

NAME	REPRESENTING	BILL #	Support	Oppose
Gary R Haugh	EMS Region IB	454 407	X	
Owen Warren	AARP.	407	X	
[illegible]	Tobacco Asst	424	X	
Robert R Johnson	L+C Health Dept	426	✓	
Robert R Johnson	L+C Health Dept	437	✓	
Karen Lundervold	Self Helena	426	✓	
Mary Beth Traders	Montana AIDS Coalition	437	✓	
[illegible]	Missoula [illegible]	437	X	
Roger Tibbs	MD - Mon.	437		? Amend
BEVERLY CLAGETT	MISSOULA COMMUNITY TRANSPORT SERVICE	407	✓	
LARRY ACEY	MT HEALTH NETWORK	407	✓	
"	MT ASSOC OF LIFE UNDERWRITERS	437		AMEND
Jim Ahrens	Mt Hosp Assoc	437		
APRIL MILROY	Garfield Mnb. Service	407	X	
Ada Wedding	Garfield Mnb. Serv	407	X	
Nina Sands	MT Women's Lobby	437	X	
John Peterson	MT Catholic Conf	437	X	
Brenda Nordlund	MT Women's Lobby	437	X	
Bonnie Laufer	Mont. AIDS Council	437	X	
Lois T. Stevenson	MT Nurses Assoc.	437	X	
Patricia Fitzgerald	Mt. Nurses Assn.	407 454	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

VISITORS' REGISTER

~~STATE ADMINISTRATION~~ COMMITTEE Public Hrs.

DATE: 2/17/89

NAME	REPRESENTING	BILL #	Support	Oppose
[illegible]	MMA	407	X	
[illegible]	M.M.A.	437	X	
Shawn Dierigen	MMA	407	X	
Brigan Asay	Mt. Family Coalition	437		X
Lyle Nagel	MT St. Vol Firefighters	454	X	
"	"	407	X	
Henry E Lehr	MT St. Vol Firefighters	454	X	
"	"	407	X	
RICHARD SEDDON	MT. ST. FIREMENS ASSOC	407 454	X	
Bill Webber	Roc FD / Belgrade FD / Hills Emerg	407/454	X	
MARK FIORENTINO	HALLS EMERGENCY	407/454	X	
TIM BERGSTROM	BILLINGS FIRE FIGHTERS	454	X	
Toni Jensen	Rocky Mt Tobacco Coalition	426	X	
Jim Leiter	Health Dept	426	X	
Karen Nalum	Cancer Society	426	X	
Cynthia Banks	Lung Assoc	426	X	
Peter Van Nuis	Private / 1st Bank	426	X	
Shelley Olson	Cancer Society	426	X	
Kathleen Cornelius	Fallon Co. Ambulance Ass.	454 407	X X	
Rick Bondy	MONTANA EMS ASSN	454 407	X	
ART BICSAK	MT PRIVATE AMBOR.	454 407	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 426 (first reading copy -- white), respectfully report that SB 426 do pass.

DO PASS

Signed: _____

Thomas O. Hager, Chairman

2-15

SCRSB426.217

Form CS-32
Rev. 1985

STATUS SHEET

____ LEGISLATIVE SESSION

HUMAN SERVICES AND AGING COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
SB189	2-27-89	3-6-89	3-6-89					3-6-89			
SB214	2-27-89	3-13-89	3-13-89					3-13-89			
SB272	2-27-89	3-8-89	3-15-89							3-15-89	
SB289	2-27-89	3-8-89	3-8-89					3-8-89			
SB311	2-27-89	3-13-89	3-15-89							3-15-89	
SB340	2-27-89	3-3-89	3-3-89							3-3-89	
SB352	2-27-89	3-8-89	3-15-89								
SB398	2-27-89	3-8-89	3-15-89					3-15-89			
SB399	2-27-89	3-8-89	3-15-89					3-15-89			
SB407	2-27-89	3-13-89	3-13-89					3-13-89			
SB426	2-27-89	3-13-89	3-15-89					3-15-89			
SB437	2-27-89	3-13-89	3-13-89							3-13-89	
SB454	2-27-89	3-13-89	3-13-89					3-13-89			
SJR14	2-27-89	3-13-89	3-13-89					3-13-89			

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

INTRODUCED BY Senate BILL NO. 426

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA CLEAN INDOOR AIR ACT TO ALLOW THE PROPRIETOR OR MANAGER OF AN ENCLOSED PUBLIC PLACE TO DESIGNATE AND RESERVE THE ENTIRE AREA AS A NONSMOKING AREA; AMENDING SECTION 50-40-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-40-104, MCA, is amended to read:

"**50-40-104. Designation or reservation of smoking or nonsmoking areas -- notice.** (1) ~~Except--for--those--enclosed public--places--provided-for-in-50-40-105-and-as-provided-in 50-40-201,-the~~ The proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs; ~~or~~

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area; ~~or~~

(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or

(d) designate and reserve the entire area as a nonsmoking area.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment."

NEW SECTION. **Section 2.** **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 3.** **Effective date.** [This act] is effective on passage and approval.

-End-

LC 1286/01

THIRD READING
SB 426

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES AND AGING

Call to Order: By Stella Jean Hansen, on March 15, 1989, at 3:00 p.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON SB 426

Presentation and Opening Statement by Sponsor:

Senator Rasmussen stated that this bill was an act to revise the Montana Clean Air Act to allow the proprietor or manager of an enclosed public place to designate and reserve the entire area as a nonsmoking area; and providing an immediate effective date.

Testifying Proponents and Who They Represent:

Ron Adamson,
Jim Lighter, Montana Department of Health and Environmental Sciences
Darlene Miller
Patty Burdsall, Community Oxygen Service
Toni Jensen, Rocky Mountain Tobacco Free Challenge
Gary Horning
Karen Landers, M.D.
Annie Bartos, Montana Lung Association
Rosette Kamlowski, American Cancer Society
Anna Jones, American Lung Association
Jeff Bolstad, State Farm Insurance
Sharon Redpath

Proponent Testimony:

Ron Adamson stated that he had no objection to the bill because it did not change the law. He supported the freedom of choice and this legislation does allow freedom of choice on the part of the proprietor.

Jim Lighter stated that the Department of Health should be a leader in setting an example for the rest of the state. Because the clean air act is worded the way that it is, the building cannot be claimed as a nonsmoking building.

Darlene Miller stated her support for the clean indoor air act. If these revisions are adopted, policy development can be more definitive for protection against exposure to tobacco smoke. If the act is revised, there would be greater flexibility and decisions that must be made, whether or not to expose herself to smoke filled environment.

Patty Burdrall stated that the patients she cared for and the community look to them to set an example and act as a role model. She wants to give a strong message by her actions that smoking and second hand smoke presents a significant health risk. Exhibit 1.

Toni Jensen stated that this bill is an important piece of legislation because it offers businesses - an important new option under the Montana Clean Indoor Air Act. Exhibit 2.

Gary Horning stated this bill would allow the business proprietor to provide protection to their customers from second hand smoke. It protects defenseless infants and children from second hand smoke. The law would prevent the accidental burning of merchandise in a business and it would save on custodial upkeep and maintenance on the inside structure of businesses. Exhibit 3.

Karen Landers, M.D. stated that as a pediatrician whose primary focus is the prevention of disease, she speaks in favor of this bill. Exhibit 4.

Annie Bartos stated that she supports this bill.

Rosetta Kamlowski supports this bill.

Anna Jones stated that in discussing smoking we are dealing with a substance that has been doing serious harm to Americans for decides, smokers and non smokers alike. Exhibit 5.

Jeff Bolstad stated that what is fair, right and just in contained in this legislation. The right of a business owner to allow his establishment to be smoke free is fair, right and just.

Sharon Redpath stated that she was a sufferer from ambient smoke and urged the support of this bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Stickney asked Mr. Lighter if he felt this bill was necessary if there was previous legislation already and Mr. Lighter said that there was no smoking allowed in most work places unless it was a private office. The majority of the people that joined the Gasp group felt as an agency dedicated to public health protection, the Department should be advocate for a smoke free environment.

Rep. Simon asked Senator Rasmussen and Mr. Anderson if the bill could not simply say it may designate an entire area a smoking area or a non smoking area by posting a sign to the entire area. If you designate an area as non smoking you don't have to post it but if you declare it a smoking area, you do have to post it. Senator Rasmussen said it would be known quickly as the language of the bill is now that the entire area is non smoking. Mr. Anderson stated to designate an area a non smoking area is now in the present statute and as far as posting is concerned it is clearly covered.

Closing by Sponsor:

Senator Rasmussen closed on the bill.

DISPOSITION OF SB 426

Motion: Rep. Gould made a Motion TO BE CONCURRED IN.

Recommendation and Vote: A vote was taken and all voted in favor with the exception of Reps. Stickney and Squires. Motion carries.

DISPOSITION OF HB 741

The Hearing on HB 741 was held on March 3, 1989.

Motion: Rep. Gould made a Motion to TABLE this bill.

Discussion: Rep. Russell discussed the uniform system of hospital reporting and what the average costs are for Montana hospitals today which is valid information. Rep. Russell then suggested the appointment of a subcommittee.

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date March 15, 1989

NAME	PRESENT	ABSENT	EXCUSED
Stella Jean Hansen	✓		
Bill Strizich	✓		
Robert Blotkamp	✓		
Jan Brown	✓		
Lloyd McCormick	✓		
Angela Russell	✓		
Carolyn Squires	✓		
Jessica Stickney	✓		
Timothy Whalen	✓		
William Boharski	✓		
Susan Good	✓		
Budd Gould	✓		
Roger Knapp	✓		
Thomas Lee	✓		
Thomas Nelson	✓		
Bruce Simon	✓		

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EXHIBIT 1
DATE 3-15-89
HB SB 426

WITNESS STATEMENT

NAME Patty Bussdaall BILL NO. 426

ADDRESS P.O. Box 9336 Helena, Mt DATE 3/15/89

WHOM DO YOU REPRESENT? Community Oxygen Services

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

As health care provider we feel it is important to have the option to designate our facility totally smoke free.

The patients we care for and the community look to us to set an example and act as a role model. We want to give a strong message by our actions that smoking and second hand smoke presents a significant health risk.

It has been determined that smoking is associated with emphysema, chronic bronchitis, lung cancer and heart disease. It increases the prevalence of mucus production, cough, freq. & severity of asthma attacks and the recurrence of respiratory infections. Lung function decreases with smoking and with chronic exposure to second hand smoke. Maternal smoking is associated with low birth weight, increased mortality, premature births and some complications of pregnacy.

Our patients with respiratory & cardiac disease are at increased risk from passive smoke. Some choose to limit activities outside of their home for fear of exposure to smoke and lack of understanding of their needs.

There are businesses in our community that try to provide for a non smoking area but at times are not effective due to poor ventilation or layout.

CS-34

If this law were passed it would give them another option and improve the possibilities of clean indoor air for all of us.

EXHIBIT 2
DATE 3-15-89
HB SB 426

WITNESS STATEMENT

NAME Toni Jensen BILL NO. SB 426

ADDRESS 422 Holter DATE

WHOM DO YOU REPRESENT? Rocky Mountain Tobacco Free Challenge

SUPPORT ✓ OPPOSE AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Madam Chairman and members of this committee. I am Toni Jensen, Coordinator of the Rocky Mountain Tobacco Free Challenge, a program operated by the State Department of Health and Environmental Sciences.

I am here to speak on behalf of SB426. I think that this is an important piece of legislation because it offers businesses an important new option under the Montana Clean Indoor Air Act - the option to be smoke-free areas. Even the Tobacco Company representatives supported this bill during the hearing in the Senate recently. Passive smoke is a public health hazard and evidence points to an increased risk of respiratory problems and lung cancer as a result of inhaling sidestream smoke.

SB426 effectively and simply provides for those interested in designating themselves tobacco free,

CS-34

EXHIBIT 3
DATE 3-15-89
~~HB~~ SB 426

WITNESS STATEMENT

NAME Gary Herning BILL NO. 426

ADDRESS 3675 44th St W. DATE 3/15/89

WHOM DO YOU REPRESENT? Self

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This bill would allow the business proprietor to provide protection to their customers from second-hand smoke
2. It protects defenseless infants and children from second-hand smoke
3. The law would prevent the accidental burning of merchandise in a business. ie. clothing stores. Also, this law would prevent hazardous fire situations in retail and food service businesses. It should bring down fire insurance premiums
4. It would save on custodial upkeep and maintanance on the inside structure of businesses.

EXHIBIT 4
DATE 3-15-89
~~HB~~ SB 426

TESTIMONY FOR HOUSE HUMAN SERVICES AND AGING COMMITTEE

Support SB 426 Allow proprietor to designate entire public place as nonsmoking area

Name: Karen Landers MD, Pediatrician from Helena

Representing: Self

As a pediatrician whose primary focus is the prevention of disease, I speak in favor of SB 426 which allows an entire public place to be designated as non-smoking by a proprietor or manager. Evidence suggests that passive smoke is not without effect. Despite clearly delineated smoking and non-smoking areas in public places, I have freqently found myself inhaling passive smoke. I would choose to patronize establishments which were entirely smoke-free were they available, and I think a proprietor or manager should have the option of doing so if he or she chooses. Please give SB 426 your concurrence.

AMERICAN LUNG ASSOCIATION OF MONTANA

Christmas Seal Bldg. — 825 Helena Ave.
Helena, MT 59601 — Ph. 442-6556

EARL W. THOMAS
EXECUTIVE DIRECTOR

SB 426

HOUSE OF REPRESENTATIVES HUMAN SERVICES AND AGING COMMITTEE

STELLA JEAN HANSEN, CHAIRPERSON

MS. HANSEN AND MEMBERS OF THE COMMITTEE: MY NAME IS ANNA JONES. I AM A PROGRAM CONSULTANT FOR THE AMERICAN LUNG ASSOCIATION OF MONTANA.

WE ARE IN COMPLETE SUPPORT OF SB 426. IT SEEMS ONLY REASONABLE THAT A PROPRIETOR OF A BUSINESS SHOULD HAVE THE OPTION OF BEING SMOKEFREE. IN FACT, WE HAVE HAD MANY QUERIES FROM MONTANANS ASKING HOW THAT CAN BE DONE LEGALLY IN THEIR OWN ESTABLISHMENTS.

RECENTLY NEWSCASTERS HAVE URGED REMOVAL OF CHILEAN FRUIT FROM GROCERY SHELVES AND REFRIGERATORS BECAUSE OF POSSIBLE POISONING. IN DISCUSSING SMOKING WE ARE DEALING WITH A SUBSTANCE THAT HAS BEEN DOING SERIOUS HARM TO AMERICANS FOR DECADES - SMOKERS AND NON-SMOKERS ALIKE. WE FEEL NON-SMOKERS SHOULD BE ABLE TO OPT FOR CLEAN AIR.

PLEASE GIVE SB 426 A DO PASS RECOMMENDATION.

EXHIBIT 5
DATE 3-15-89
~~HB~~ SB 426

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. SB 426 DATE 3/15/89

SPONSOR Rasmussen

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Toni Dennis	Helena	✓	
ANNIE BARTOS (MT. LUNG ASSOC.)	HELENA	✓	
Darlene Miller (self)	Helena	✓	
Shawn Kelpatrick (self)	Helena	✓	
Anna Jones Amer. Lung Assoc. of MT	Helena	✓	
Patty Burdsall	Helena	✓	
Jeff Boldt	Helena	✓	
Karen Landess MD	Helena	✓	
R Scott Kamlowsky II (Am Cancer Society)		✓	
GARY HORNING	HAVRE, MT.	✓	
Jeanne Anderson	Helena	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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STANDING COMMITTEE REPORT

March 16, 1989

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 426 (third reading copy -- blue) be concurred in .

Signed: _____
Stella Jean Hansen, Chairman

[REP. LEE WILL CARRY THIS BILL ON THE HOUSE FLOOR]

SENATE BILL NO. 426

INTRODUCED BY RASMUSSEN

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